IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

WRS, INC., d/b/a WRS MOTION PICTURE LABORATORIES, a corporation Plaintiff, PLAZA ENTERTAINMENT, INC., a Corporation, ERIC PARKINSON, an individual, CHARLES von BERNUTH, an individual, and JOHN HERKLOTZ, an individual Defendants.	No. 2:00-CV-2041-AJS

MOTION FOR RECONSIDERATION OR FOR RELIEF FROM JUDGMENT

The Defendant Plaza Entertainment, Inc., by and through its undersigned counsel and pursuant to Federal Rule of Civil Procedure 60 (b)(6), or, in the alternative, pursuant to this Court's inherent authority to reconsider its prior rulings, hereby files this Motion for Reconsideration or for Relief from Judgment, and in support thereof avers as follows:

1. Through the history of this case, Defendant Plaza Entertainment, Inc., as well as Defendants Charles von Bernuth and Eric Parkinson, were represented by John W. Gibson, a member of the bar of the Supreme Court of Pennsylvania and of this Court (Affidavit of John W. Gibson in Support of the Defendant Charles von Bernuth's Request for Relief Under Fed. R. Civ. P. 60, Docket No. 152, pars. 3-4).

2. From the beginning of this seven-year representation, Attorney Gibson made only sporadic and cursory reports to Plaza Entertainment, Inc., with months and sometimes even more than a year passing with no contact between Attorney Gibson and Plaza Entertainment, Inc.

3. This lack of communication did not cause Plaza alarm. Eric Parkinson, also a Defendant and the sole remaining shareholder and President of Plaza Entertainment, Inc. did not have prior experience with Pennsylvania litigation and did not know what level of communication to expect from attorney Gibson. Moreover, the reports that Parkinson and Plaza did receive from Attorney Gibson indicated that the case was proceeding well in favor of the Plaza claims of financial offset, as well as towards relief for the former Plaza officers and shareholders named as additional defendants under Plaintiff's claim that these individuals were "guarantors" of the Plaza account.

4. Indeed, by Order of February 14, 2002, the case was administratively closed, and on September 15, 2003, this Court denied a motion by WRS to reopen the case.

5. WRS took an appeal from the denial of its motion to reopen the case, and, following that appeal, on July 29, 2005, this Court entered an order reopening the case.

6. On March 9, 2006, a status/settlement conference was conducted. At that conference, the Court set March 23, 2006 as the date for parties to file motions for summary judgment. This Court also determined that the parties should at their equal cost employ Schneider Downs as an accountant to review WRS's account records, which were in dispute (Gibson Affidavit, par. 9).

7. Attorney Gibson never contacted Mr. Parkinson in his individual capacity nor as a representative of Defendant Plaza Entertainment, Inc., to inform either party of this status conference, the subsequent plans for an audit of accounting records, filing of motions or any other activities or relating to the case.

8. The only contact that Mr. Parkinson or Plaza Entertainment received from Attorney Gibson from January, 2006 until May, 2007, were occasional, mailed billing statements of monies due with no explanation as to the status of the case or detail of the work performed.

9. Attorney Gibson never communicated with either Parkinson or Plaza to discuss any aspects of the case, and never informed either of ongoing activities, including the audit which Plaza Entertainment, Inc. and Parkinson would each be partially responsible to pay.

10. In fact, on April 12, 2006, about a month after the case status/settlement conference that Attorney Gibson attended, the Plaintiff filed a Motion to Show Cause Why a Default Should Not be Entered as to Defendants Charles von Bernuth, Eric Parkinson and Plaza Entertainment, Inc. The Motion recited Attorney Gibson's failure to file a Motion for Summary Judgment on behalf of the Defendants and the failure to make a payment of the portion of the accountant's fee as a purported basis for concluding that Charles von Bernuth, Eric Parkinson and Plaza Entertainment, Inc. no longer intended to defend the matter.

11. Attorney Gibson notified neither Mr. Parkinson nor Plaza Entertainment of the filing of this Motion, nor did he file any response on behalf of Mr. Parkinson or Plaza Entertainment (Gibson Affidavit, pars. 22-23).

12. On April 18 2006, this Court entered an Order requiring Charles von Bernuth, Eric Parkinson and Plaza Entertainment, Inc. to show cause why they should not be defaulted. A response date of April 25, 2006 was set.

13. Attorney Gibson again failed to advise any of the Defendants, including Eric Parkinson and Plaza Entertainment of the filing of this Order, and Attorney Gibson did not respond to the Order (Gibson Affidavit, par. 25).

14. On April 28, 2006, the Court directed the Clerk to enter a default under Rule 55(a) against Defendants Charles von Bernuth, Eric Parkinson and Plaza Entertainment, Inc., and

a default was entered that same day.

15. Continuing his pattern of gross neglect of his professional obligations to the Defendants, Attorney Gibson did not advise any of the Defendants, including Mr. Parkinson and Plaza Entertainment, of the entry of the default (Gibson Affidavit, par. 27). Likewise, he did not take any action on behalf of the Defendants to open the default or have the matter reconsidered (Gibson Affidavit, par. 28).

16. On October 13, 2006, a Motion for Default Judgment was filed against Defendants Eric Parkinson and Plaza Entertainment, Inc.. The Motion sought to fix the amount of liability in excess of $2.5 million.

17. Again, in gross dereliction of his duties, Attorney Gibson failed to notify Eric Parkinson and Plaza Entertainment, Inc. of this Motion (Gibson Affidavit, par. 30). He also failed to make any response to the Motion on behalf of either Eric Parkinson or Plaza Entertainment, Inc. (Gibson Affidavit, par. 30).

18. On February 20, 2007, the Court entered an Order granting a judgment against both Eric Parkinson and Plaza Entertainment, Inc., in the sum of $2,584,749.03.

19. Not surprisingly, Attorney Gibson did not notify Eric Parkinson or Plaza Entertainment, Inc. that a judgment of more than $2.5 Million had been entered against both parties, as well as against co-Defendant Charles von Bernuth (Gibson Affidavit, pars. 35-36, 41 -42). Attorney Gibson made no attempt to induce the Court to reconsider the judgment. He filed no appeal from the judgment. He simply did nothing (Gibson Affidavit, pars. 34-38).

20. On May 21, 2007, Parkinson sent an email to co-Defendant Charles von Bernuth on which Attorney Gibson was copied (See Exhibit 1 to Exhibit A to the motion of Charles von Bernuth, Docket No. 150). In the email, Parkinson expressed his belief to Mr. von Bernuth that the case against Parkinson, von Bernuth and Plaza Entertainment, Inc. had been dismissed, as

Parkinson and Plaza were both completely unaware of any activities that had occurred in the case over the prior two years.

21. Attorney Gibson emailed a response in which he informed Parkinson and Plaza, ***for the first time*** that default judgments had been entered against Parkinson, against Plaza Entertainment, Inc. and against Charles von Bernuth (Gibson Affidavit, par. 36, Exhibit 1 to Gibson Affidavit).

22. Even then, however, Attorney Gibson sought to minimize the significance of such judgments, stating that there was a strong basis for reversal on appeal, notwithstanding the fact that the appeal to which he referred was taken only by Defendant John Herklotz, represented separately (Gibson Affidavit 37; Exhibit 1 to Gibson Affidavit).

23. Attorney Gibson stated that it was, in fact, his claim that the existence of an unpaid balance for his services from Parkinson and Plaza Entertainment, Inc. was his justification for the inexcusable dereliction of his duties to defend Mr. Parkinson, Plaza Entertainment as well as Charles von Bernuth (Gibson Affidavit, pars 13 – 17). Attorney Gibson had never before made any such claims, nor had he filed a motion to withdraw from representation of Parkinson or Plaza Entertainment, Inc. In fact, Attorney Gibson had been receiving payments on a regular basis from statements mailed to Parkinson and to Plaza Entertainment, Inc.

24. Shortly after Mr. Parkinson received the May 21, 2007 email from Attorney Gibson informing him of the judgments against Mr. Parkinson, Mr. von Bernuth and Plaza Entertainment, Inc., Parkinson in turn informed Charles von Bernuth. This was the first time that Mr. von Bernuth had been informed by any one that a judgment of more than $2.5 million had been entered against him (von Bernuth Motion, § 26).

25. Mr. Parkingson, representing himself, filed a motion for reconsideration or for relief from the judgment entered against him, substantially similar to the motion of Mr. von Bernuth and relying upon the identical facts.

26. In sum, Attorney Gibson was repeatedly and inexcusably derelict in his nonperformance of his professional duties to provide competent representation to Eric Parkinson and to Plaza Entertainment, Inc., to act with a reasonable diligence and promptness in representing Parkinson and Plaza Entertainment, Inc., and to keep Parkinson and Plaza informed about the status of the case and explain the case sufficiently to permit Parkinson and Plaza to make informed decisions about the representation.

27. Attorney Gibson himself acknowledges that he has "no excuse for [his] failure to properly defend clients for which [he] had entered an appearance that has never been withdrawn… [and] for his conduct in failing to keep [Defendants] informed and advised that a default was being entered against [Defendants] and later that [Defendants] liability was being fixed in an amount in excess of $2.5 Million without opposition by [Attorney Gibson}." (Gibson Affidavit pars. 39, 41).

28. Attorney Gibson's neglect amounted to an abandonment for which Eric Parkinson and Plaza Entertainment, Inc. were in no way responsible.

29. To permit the judgment against Eric Parkinson and against Plaza Entertainment, Inc. to stand in these circumstances would be an injustice that would undermine public confidence in the administration of justice.

30. This is particularly true due to the existence of numerous meritorious defenses to the Plaintiff's claims against the Defendants, which, through dereliction of duties by Attorney Gibson, were not presented to this Court. The principal defenses are described in Mr. von Bernuth's Motion for Reconsideration or Motion for Relief of Judgment and Brief In Support, filed with the Court at Docket Nos. 150 and 151, along with the Affidavits of Eric Parkinson,

Charles von Bernuth and John W. Gibson (Docket Nos. 152, 153, 154 and 165). They were further stated in Parkinson's letter to the Court of May 28, 2007, docketed as Document No. 148, and in his Motion For Reconsideration, filed contemporaneously with this one.

WHEREFORE, the Defendant Plaza Entertainment, Inc. respectfully requests that this Court enter an Order vacating the judgment against Plaza Entertainment, Inc. as to both liability and damages, thereby affording Plaza Entertainment, Inc. the opportunity to defend on the merits.

Respectfully Submitted,

/s/Stephen Jurman
STEPHEN JURMAN, ESQ.
Pa I.D. No. 25574

1400 Lee Drive
Moon Township, PA 15108

412-262-2575

Attorney for Defendant Plaza Entertainment, Inc.

Date: January 25, 2008